

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC**

In the Matter of)	
)	
Performance Measurements and Standards for Interstate Special Access Services)	CC Docket No. 01-321
)	
Petition for U S West, Inc., for a Declaratory Ruling Preempting State Commission Proceedings to Regulate U S West’s Provision of Federally Tariffed Interstate Services)	CC Docket No. 00-51
)	
Petition of Association for Local Telecom- munications Services for Declaratory Ruling)	CC Docket Nos. 98-147, 96-98, 98-141
)	
Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended)	CC Docket No. 96-149
)	
2000 Biennial Regulatory Review- Telecommunications Service Quality Reporting Requirements)	CC Docket No. 00-229
)	
AT&T Corp. Petition to Establish Performance Standards, Reporting Requirements, and Self-Executing Remedies Need to Ensure Compliance by ILECs with Their Statutory Obligations Regarding Special Access Services)	RM-10329

**COMMENTS OF
THE AMERICAN PETROLEUM INSTITUTE**

The American Petroleum Institute (“API”), through its attorneys, hereby submits its Comments in response to the Notice of Proposed Rulemaking (“NPRM”) in the above-captioned matter.¹

¹ API is a national trade association representing approximately 350 companies involved in all phases of the petroleum and natural gas industries, including the exploration, production, refining, marketing and transportation of petroleum, petroleum products and natural gas. The API Telecommunications Committee

DISCUSSION

A. Timely, Competitively Neutral Provisioning of ILEC Interstate Special Access Services is Essential for Competition in the Interexchange Services Market.

Member companies have endured significant, continuing delays and problems in the provisioning of interstate special access services by Incumbent Local Exchange Carriers (“ILECs”).² The subject was the principal topic of the API Telecommunications Committee’s Spring Meeting in 2001.³ For the reasons discussed herein, API largely agrees with AT&T that “the Commission should adopt nationwide performance standards, reporting requirements, and effective, self-executing remedies for ILEC-provisioned interstate special access services.”⁴

The timely provisioning of special access services is central to an efficient, competitive telecommunications services market for enterprise customers. As AT&T points out, despite its strong preference to self-provision all “last mile” connections to serve its customers, “AT&T is unable to do so . . . [and the] use of incumbent’s special access services is imperative to permit competitive carriers to serve the broadest possible

is one of the standing committees of the organization's Information Systems Committee. The Telecommunications Committee evaluates and develops responses to state and federal proposals affecting telecommunications facilities and services used in the oil and gas industries.

² In recent years, the delays in provisioning special access circuits to interstate pipeline company locations has become a major concern. Relatedly, response to service problems and outages is a major issue in some areas of the country. One member company having its corporate offices in an established, suburban commercial campus, well within a major metropolitan area, had to wait almost twelve months for the delivery of an additional DS-1 access circuit.

³ At this meeting, several of the major interexchange carriers made presentations on the topic, “Telecommunications: Service Provisioning and Delivery Challenges.” In these presentations, the carriers noted a number of factors including significant increase in bandwidth requirements and internal interexchange carrier processes and systems have contributed to provisioning delays.

⁴ AT&T Corp., Petition for Rulemaking, filed October 30, 2001 (“AT&T Petition”), p.3.

market.”⁵ Other major interexchange carriers have advised the API Telecommunications Committee that they strongly prefer to extend their networks to provide end-to-end service, where and as feasible, but have advised that replication of ILEC facilities is not doable and should not be expected.

Intervention on the part of the Commission with respect to the provisioning of ILEC interstate special access services is essential to a fully competitive interexchange data communications services market.⁶ Operational, technological and economic considerations incent enterprise customers to consolidate their data communications requirements with a single interexchange service carrier. For example, in mapping permanent virtual circuits for ATM and frame relay services, the use of multiple carriers increases the cost of achieving the desired level of redundancy and diversity to given corporate locations. Accountability for data communications services is more readily achieved when a single, interexchange service provider is utilized. This is particularly true as enterprise customers migrate to the “any-to-any” capabilities of IP-enabled services.

Delays in provisioning special access services impedes the migration from one carrier to another.⁷ Almost universally, the provisioning of special access services to

⁵ AT&T Petition, p. 12.

⁶ Maximum carrier accountability and the benefits of volume-based pricing apply equally to all interexchange services procurement decisions. However, additional considerations apply to the principal interexchange services utilized by enterprise customers for data communications: frame relay services and asynchronous transfer mode (“ATM”) services and IP-enabled services which utilize the interexchange carriers’ underlying frame relay and ATM transport networks.

⁷ Transitioning from one principal interexchange carrier to another is a significant undertaking for enterprise customers. Delays in provisioning special access service further strain internal resources as well as imposing additional out-of-pocket expenses.

enterprise locations requires the most lead time of the steps and procedures generally associated with transitions to successor carriers. This is a major concern for API member companies many of which have in excess of several hundred locations in their corporate data networks requiring special access services.⁸ To maintain connectivity and to support reliably corporate data applications, the enterprise customer typically must maintain incumbent interexchange carrier services at its locations until a sufficient number of its sites are cut-over to the successor carrier's services. Delays in provisioning special access at even a handful of enterprise locations can delay the transition to the successor's services and cause the customer to incur the expense of paying for both the incumbent's and the successor's services at multiple locations far longer than what is operationally prudent to decide whether to accept or reject the successor carrier's services. The Commission should ensure that carrier selection decisions are not influenced unduly by the costs, risks and delays of migrating to successor carriers.

B. Reasonable Performance Measures, Including Service Installation Intervals, Are in the Public Interest

Despite significant deregulatory initiatives, the market for interstate access services is not competitive, notwithstanding the recent statements made on behalf of several Regional Bell Operating Companies ("RBOCs") that the market for interstate special access services is competitive.⁹ In fact, the market is undergoing severe contraction. The numerous bankruptcy filings of competitive local exchange carriers

⁸ Bandwidth requirements for corporate data and video communications continue to grow. The factors driving the demand for "broadband" services for residential and small business customers apply to enterprise customers. Thus, demand for DS-3 access services among enterprise customers likely will continue to grow for the foreseeable future.

(“CLECs”) strongly suggest that the exchange access market is becoming less competitive. Further, these bankruptcies, including the recent, highly publicized bankruptcy involving a major wireless CLEC,¹⁰ are likely to have a “chilling effect” on the willingness of enterprise customers to utilize CLECs as primary access service providers.

In many respects, the interexchange carriers are in the best position to recommend measures for capturing ILEC performance in connection with ILEC provisioning of special access services. WorldCom’s proposed measures for ordering and provisioning interstate special access services appear well conceived and narrowly tailored to provide interexchange carriers essential information.¹¹ API endorses WorldCom’s proposed measures on trouble monitoring and repair, as well.¹² WorldCom’s proposed measures appear directly related to enabling interexchange carriers to monitor service provisioning and repair requests, to manage their internal processes and procedures and to keep their customers fully apprised of the installation and trouble resolution processes in regard to special access services provisioned by ILECs.

API shares the Commission’s view that appropriate performance measurements should provide “greater transparency of the incumbent LEC’s special access provisioning processes” and establish “a disincentive to the incumbents to engage in any

⁹ NPRM, ¶14, n.27.

¹⁰ “Winstar Ordered to Keep Operating for Week,” The Washington Post, December 12, 2001, p. E-5. (highlighting the adverse impact on federal agencies due to the CLEC’s discontinuance of services).

¹¹ Letter from Lisa B. Smith, WorldCom to Magalie Roman Salas, Secretary, Federal Communications Commission (filed July 12, 2001) (“WorldCom July 12 Ex Parte”).

¹² *Ibid.*

discriminatory activities with respect to these services.” When these benefits are coupled with the rapid, ongoing consolidation in the domestic telecommunications sector, it is apparent that reasonable performance measurements and associated reporting obligations with regard to interstate special access services are warranted.

Performance measures should further both the nondiscrimination obligations of Sections 202(a) and 272(e)(1) of the Act on the one hand, and the obligation that all carriers engage in just and reasonable practices in providing service as required under Section 201(b) of the Act on the other hand. Section 201(b) reasonably contemplates the timely provisioning of essential services and establishment of performance standards including provisioning intervals. The need to improve the timeliness of provisioning is as important as the interest to ensure that the ILECs do not engage in discriminatory practices in provisioning.

C. Recommended Approach For Establishing Service Provisioning Intervals

A uniform one-size-fits-all provisioning interval for interstate special access service may not be realistic, but a limited set of variables may provide the basis for workable service provisioning intervals that could apply to all ILECs required to comply with the standards. The following is a suggested set of installation variables that may provide the basis for a service-provisioning interval matrix:

Nature of Service: (DS-1, DS-3, Other Services)

Mileage: Distances in excess of one or more mileage increments might warrant potentially longer installation intervals.

Location: Utilize a limited number of zones based on teledensity,¹³ with services provisioned in the highest density zone having the shortest interval and a longer lead time for service provisioned in the zone having the lowest density.

Percent Timely Installed Value: Reasonably aggressive service provisioning goals for each category of installations would be established, with the percent of timely installations increasing at six-month or twelve-month periods.

Consensus on the variables and service provisioning intervals may well involve industry discussions in the event such intervals cannot be finalized in this proceeding. API's interest is that the service provisioning intervals be reasonably aggressive, consistent with the reasonable expectations of interexchange carriers and enterprise customers.

D. Enforcement Should Remain Principally With the FCC; Periodic Reviews Rather Than Sunset Dates Are Appropriate; and Performance Standards Should be Imposed at a Minimum on the Price Caps LECs¹⁴

The mixed use special access rule for determining the jurisdiction of special access services has been in effect for approximately ten years. It fits the nature of data communications; jurisdictional boundaries are not relevant to traffic flows and attempts at jurisdictional traffic measurements are impractical and would be economically wasteful. The vast preponderance of special access services are jurisdictionally interstate. API maintains that the principal regulatory and enforcement responsibility for special access performance measures should remain with the Commission inasmuch as the services are jurisdictionally interstate.

¹³ See, e.g., Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, Transport Phase I, Second Report and Order and Third Notice of Proposed Rulemaking, 8 FCC Rcd 7374 (1993) (establishing zone-density pricing for ILEC services).

¹⁴ API defers to other interested parties with respect to the appropriate level of monetary forfeitures and other enforcement tools.

As a general proposition, API supports limited regulation in terms of substantive content and duration. In regard to this matter, ongoing industry consolidation suggests that certain regulatory requirements be retained and that any presumption that such regulation will not be needed at a date certain is ill-advised. Thus, a periodic review of the performance standards, perhaps three (3) years after the effective date of rules adopted herein, would be appropriate. The establishment of a sunset date is not.

Whether the proposed performance standards should be applied to all ILECs or only the RBOCs is problematic. From the enterprise customer's perspective, timely provisioning of special access services should not be optional for some carriers. At a minimum, however, all ILECs subject to price cap regulation should be subject to the performance measures adopted in this proceeding. These carriers carry the vast preponderance of interstate special access service traffic.

Respectfully submitted,

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